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IN THE
Supreme Court of the United States

OCTOBER TERM, 1943.

No. **989**

MAX GELDZAHLER, *Petitioner,*

v.

THE UNITED STATES OF AMERICA.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.**

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The petitioner, Max Geldzahler, prays that a writ of certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit entered on April 5, 1944 (R.), affirming petitioner's conviction for violation of Sections 1593 (a), 1592, and 1591, Title 19, U. S. C. A.

OPINIONS BELOW.

The judgment of the District Court of the United States for the Southern District of Florida, Miami Division (R. 17,

18, 19), is not reported. The opinion of the Circuit Court of Appeals (R.), is not yet reported.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on April 5, 1944. The jurisdiction of this Court is invoked under Sec. 240(a) of the Judicial Code as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by the Court on May 7, 1934.

QUESTIONS PRESENTED.

1. Whether petitioner smuggled or attempted to smuggle merchandise into the United States where within the confines of the Customs Inspection station diamonds were voluntarily delivered by petitioner to Customs officers for inspection and imposition of duty.

2. Whether Baggage Declaration and Entry Form of Treasury Department is the exclusive means of declaring as subject to duty diamonds held on the person of one about to enter the United States.

3. Whether failure to list on Baggage Declaration and Entry form of the Treasury Department diamonds held on the person of one about to enter the United States makes such form a false, forged, or fraudulent invoice or paper where the diamonds are voluntarily presented to customs officer for inspection.

STATUTES INVOLVED.

Section 1593, United States Code, Title 19, Act of June 17, 1930, 46 Stat. 751 Section 1591, United States Code, Title 19, Act of June 17, 1930, 46 Stat. 750, as amended Aug. 5, 1935, 49 Stat. 527, Section 1592, United States Code, Title 19, Act of June 17, 1930, 36 Stat. 750, as amended August 5, 1935, 49 Stat. 527. See Appendix.

STATEMENT.

Petitioner was indicted on April 8, 1943, in the United States District Court for the Southern District of Florida, Miami Division, on six counts charging smuggling or attempt to smuggle a certain lot of diamonds into the United States. Counts 4 and 6 were dismissed (R. 80). On counts 1, 2, 3, and 5 petitioner was found guilty by a jury on July 29, 1943 (R. 17). He was sentenced to one year and one day on each of counts 1, 2, 3, and 5, sentences to run concurrently. A fine of \$1000 also was imposed on each of these counts, defendant to be imprisoned until payment of said fine or otherwise discharged as provided by law, it being further provided that on payment of \$1000 on any one of the counts the balance of the fines on the remaining counts to be remitted (R. 18). In per Curiam opinion the Circuit Court of Appeals for the Fifth Circuit on April 5, 1944, affirmed the judgment of the District Court (R.). Petitioner is engaged in the business of importing diamonds having an office in New York City (R. 92). He had in Havana, Cuba, a cousin Chaim Geldzahler, who with his wife and son were applicants for immigration visas to come to the United States (R. 100). Petitioner visited this cousin in Havana four times in the year 1941 (R. 93) and learned that the cousin had in his possession a large lot of small diamonds which he had brought with him when he fled from Antwerp (R. 95, 97), which diamonds the cousin was hiding from the notice of the Cuban officials (R. 101) and hoped to take to the United States when he came to this country (R. 101).

According to the testimony of the plaintiff he with his cousin appeared before the American Consul at Havana and the vice consul and offered to leave these diamonds with the Consular officials to be forwarded to the United States (R. 98-102, 230-240). The record shows that these officials testified that they had no knowledge of such incident (R. 203). On returning to the United States, petitioner filled out a customs form declaring the articles in his baggage

subject to inspection and duty, but did not include in that list the diamonds which he claimed his cousin had given him to take to the United States (R. 103). The vessel arrived at Miami on January 7, 1942, and there he appeared before a customs official with the declaration which he had made out at the time of his departure from Havana, Cuba. His baggage was then taken by a redcap, and petitioner followed to the exit where was stationed a customs guard (R. 105). The guard questioned petitioner who told the guard that he had cigars on his person on which duty had not been paid. Asked if he had anything else he took from his pockets packages containing a large number of small diamonds. Thereupon he was taken to another room and questioned by several customs officials, following which he was placed under arrest and the diamonds seized. When stopped by the guard he was still inside the customs barrier (R. 106). In his statement when questioned by the customs officials he testified that he had purchased the diamonds in Havana, Cuba, from a person named Jack or Jacques. At his trial he repudiated the statements made to the customs officials and stated that his answers to the questions of the customs officials were false regarding the source from which he acquired the diamonds. However, he insisted that he had no intention of trying to evade payment of duty on the diamonds in question and voluntarily gave them up to the customs officials while inside the customs barrier. The baggage declaration and Entry form, Customs form 6063, showed that petitioner listed only several small articles not subject to duty. Petitioner claimed that in the past he had imported diamonds on which he paid duty, the details of the payment of duty being attended to by a customs broker in New York who handled such business for petitioner.

At the trial counsel for petitioner demurred to the indictment which demurrer was overruled by the Court on July 24, 1943 (R. 12, 13). Assignment of errors alleged were that (1) the Court erred in denying motion for new

